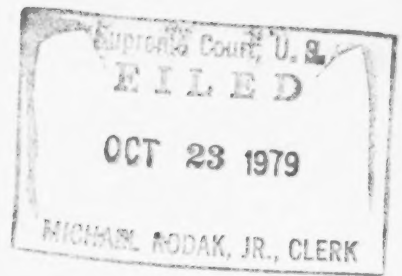


79-661



IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-5279

MICHAEL E. LaGORGa, Petitioner

v

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

Michael E. LaGorga,
Petitioner
Terre Haute Honor Camp
P.O. Box 33
Terre Haute, Indiana
47808

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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

To the Honorable, the Chief Justice and Associate
Justices of the Supreme Court of the United
States:

Michael E. LaGorga, the petitioner herein, prays
that a writ of certiorari issue to review the
judgment of the United States Court of Appeals
for the Sixth Circuit entered in the above
entitled case on September 24, 1979.

OPINIONS BELOW

The opinion of the United States Court of
Appeals for the Sixth Circuit is unreported and
is printed in Appendix A hereto, infra, page 6.
The judgment of the United States Court of Appeals
for the Sixth Circuit is unreported and is printed
in Appendix A hereto, infra, page 6. The Journal
Entry of Judgment of the United States District
Court, Northern District of Ohio, Eastern Division,
is printed in Appendix B hereto, infra, page 8.

JURISDICTION

The judgment of the United States Court of
Appeals for the Sixth Circuit (Appendix A, infra,
page 6) was entered on September 24, 1979. The
jurisdiction of the Supreme Court is invoked
pursuant to 28 U.S.C. § 1254 (1).

QUESTION PRESENTED

Whether an order denying a motion to disqualify
a trial judge under 28 U.S.C § 455 is reviewable on
appeal prior to the rendition of final judgment by
the trial court.

STATUTORY PROVISIONS INVOLVED

This case involves 28 U.S.C. § 1291 which provides:

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

STATEMENT OF THE CASE

This is a criminal action brought by the United States of America, the respondent, against Michael E. LaGorga, the petitioner. The issue before this Court arose when the United States Court of Appeals for the Sixth Circuit held that a motion to disqualify a trial judge under 28 U.S.C. § 455 is not reviewable on appeal prior to the rendition of final judgment by the trial court.

The instant action was commenced when a

federal grand jury returned indictments against the petitioner which alleged that he had engaged in counterfeiting, conspiracy to counterfeit and plate making in violation of 18 U.S.C. §§ 471, 474, 2 and 371. Approximately five (5) months prior to trial, the petitioner filed his motion to disqualify the trial judge pursuant to 28 U.S.C. § 455 on the ground that the petitioner intended to call the trial judge as a defense witness at the trial. In support of the motion, the petitioner alleged that various activities of the trial judge in an unrelated criminal case involving the petitioner rendered it necessary to call the trial judge as a witness to establish material elements of the petitioner's defense in the pending criminal matter.

The trial court denied the petitioner's motion and the issue was immediately appealed to the United States Court of Appeals for the Sixth Circuit. After consideration of the respondent's motion to dismiss the appeal, that court ruled that the district court's order was not an appealable decision under 28 U.S.C. § 1291. It is from that decision that the petitioner now seeks issuance of a writ of certiorari.

REASONS FOR GRANTING THE WRIT

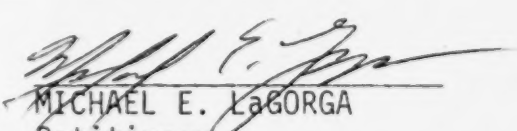
The issue in this case involves the petitioner's Sixth Amendment right to a fair trial wherein he be permitted to compel the attendance of witnesses on his behalf. The action of the trial judge in refusing to disqualify himself effectively precluded the petitioner from exercising the rights conferred by the Sixth Amendment.

The action of the court of appeals, in dismissing the appeal on the basis that the trial court's order was a nonpermissible interlocutory appeal further prevented the petitioner from exercising his Sixth Amendment rights. Petitioner submits that upon the basis of the specific facts of this case, the court of appeals should have permitted the interlocutory appeal.

Petitioner further submits that because a fundamental constitutional right is involved and because this Court has not yet spoken on the important issue raised, this Court should allow the requested writ of certiorari.

CONCLUSION

Wherefore, the petitioner respectfully prays that a writ of certiorari be granted.


MICHAEL E. LaGORGa
Petitioner

APPENDIX A

No. 79-5279

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,)
Plaintiff-Appellee,)
v.) O R D E R
MICHAEL E. LaGORGa,)
Defendant-Appellant)

BEFORE: CELEBREZZE, Circuit Judge, PHILLIPS and
PECK, Senior Circuit Judges

Upon consideration of the appellee's motion to dismiss this appeal, and further considering the appellant's response thereto,

And it appearing that the district court's order is not an appealable decision under 28 U.S.C. § 1291, Albert v. United States District Court for the Western District of Michigan, 283 F.2d 61 (6th Cir. 1960), cert. denied, 365 U.S. 828 (1961); Collier v. Picard, 237 F.2d 234 (6th Cir. 1956), accordingly,

It is Ordered that the motion be granted and the appeal is hereby dismissed.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman

John P. Hehman, Clerk

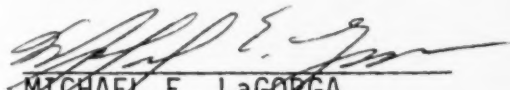
APPENDIX B

8/6/79 Denied

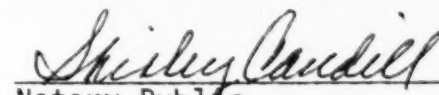
/s/ Thomas D. Lambros

AFFIDAVIT OF SERVICE

I, Michael E. LaGorga, being first duly sworn, depose and say that three (3) copies of the foregoing Petition for Writ of Certiorari were forwarded to Stephen R. Olah, Special Attorney, U.S. Department of Justice, Cleveland, Ohio 44114 and to Stephen J. Wilkinson and Christopher M. McMurray, Attorneys, U.S. Department of Justice, Washington D.C. 20530, by regular U.S. mail, postage prepaid this 22nd day of October, 1979


MICHAEL E. LaGORGA

SWORN TO and subscribed in my presence this
21 day of October, 1979


Notary Public